



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411  
BOSTON MASSACHUSETTS 02108

MICHAEL J. SULLIVAN  
DIRECTOR

TEL: (617) 727-8352  
(800) 462-OCPF  
FAX: (617) 727-6549

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AO-97-22

John W. Delaney, Esq.  
Hale and Dorr, LLP  
60 State Street  
Boston, MA 02109

Re: Polling expenditures

Dear Mr. Delaney:

This letter is in response to your September 3, 1997 request for an advisory opinion.

You have stated that an individual is considering being a candidate for state office. The individual wishes, at his own expense, to commission a poll. The poll would be intended to determine voter attitudes on current issues, and to test voter support for various individuals, including the potential candidate.

The individual has taken no steps to become a "candidate," as defined by M.G.L. c. 55, s. 1.

**Question**

Does an expenditure to "test the waters" by conducting a poll regarding the possible candidacy of an individual trigger the filing and disclosure provisions of the campaign finance law?

**Answer**

No, assuming the poll is designed to obtain information rather than to influence voters.

**Discussion**

A "candidate" is defined by the campaign finance law, in part, as anyone who has "received a contribution or made an expenditure, or has given his consent for any other person or committee to receive a contribution or make an expenditure **for the purpose of influencing his nomination or election**

to **such office**, whether or not the specific public office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made . . ." M.G.L. c. 55, s. 1 (emphasis added).<sup>1</sup>

Neither the statute nor the regulations specify that an individual who privately pays for a poll to assess a possible candidacy necessarily becomes a "candidate" because of that activity. The regulations, however, allow candidates and political committees to use campaign funds for that purpose. See 970 CMR 2.05(2)(f). The existence of a regulation allowing candidates to make such expenditures, however, does not mean that any person who makes such an expenditure automatically becomes a candidate.

The office has advised that a person may be considered a "candidate" even before the specific office sought is determined. See AO-93-12, in which the office stated that an individual who had a political committee organized on his behalf is presumably a candidate. As noted in AO-93-12, a determination regarding whether an individual is a "candidate" as that term is defined by the campaign finance law must be based on a review of all relevant facts.

In this instance we understand that no committee has been formed, that the individual will use only his own funds to pay for the poll, and that the poll will not be a "push poll" or otherwise used to encourage recipients to vote for the individual or against a possible opponent. A poll, by definition, is the "questioning or canvassing of persons selected at random or by quota **to obtain information or opinions to be analyzed.**" Webster's New Collegiate Dictionary. We do not know the specific questions which would be included in the polling process, but **we assume the questions would be designed to obtain information or opinions rather than to promote or oppose a possible candidacy.**

This opinion is solely within the context of the campaign finance law and is provided on the basis of representations in your letter.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,



Michael J. Sullivan  
Director

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<sup>1</sup> A person is also a "candidate" if the individual has "[1] taken the action necessary under the laws of the commonwealth to qualify himself for nomination or election, . . . or [2] holds elective public office . . . [and has] received money or anything of value, or made any disbursement . . . for any fund-raising activity . . . held on behalf of said individual [while holding public office]." See M.G.L. c. 55, s. 1.